

ARNOT LAW OFFICES

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June 10, 2014

VIA EMAIL AND COURRIER
Chief, Litigation III Section
Antitrust Division
U.S. Department of Justice
450 5th Street NW, Suite 4000
Washington, DC 20001

RE: Review of ASCAP and BMI Consent Decrees

To whom it may concern:

I represent ownership groups and management groups within the hospitality industry and am personally an investor and owner in each of those groups. I write to provide comment on our opinions of what we contend are: double-dipping in the present rate structure by both ASCAP and BMI; the unavailability of an affordable and simple fee dispute resolution process; and the lack of a market reality to the current national rate pricing structure.

APPEARANCE OF DOUBLE-DIPPING

In the hotel industry, a growing segment of licensees purchase background music for its lobbies, elevators, banquet rooms, exercise room and music on hold for its telephone system through a third party provider, like MUZAK. The service agreement we enter into provides that MUZAK has already paid the ASCAP, BMI and SESAC licensing fees. ASCAP, BMI and SESAC do not have licensing agreements which address the fact that the background music licensing is already paid for by a third-party service provider.

The licensors then come after us for licensing of the public area televisions, rightly claiming that our background music license does not cover the televised media. However, the licensors do not have a rate card which credits the licensee for having already paid its background music license and simply provides that if you have public area televisions, you must pay the rate for background music and audio/video enhancement. Thus, I contend, that is double-dipping.

The fact that ASCAP and BMI are coming after the lobby and lounge televisions at all is a head-scratching mystery for the small business person. To us, we provide CNN or Fox News or the Weather channel as a convenience to the guests waiting for someone to come down from their room. In the lounge, seldom if ever is the sound on, and the television generally showing some sporting event (football, basketball, baseball, etc) or news with the audio suppressed. There is no value derived by the hotel for licensed music broadcast over the public area television and no justifiable reason we can perceive to justify a \$750 license fee to turn on the NFL Today.

I respectfully request that the Justice Department investigate this double-dipping allegation and require that the music licensing providers address the fact that they are collecting from both the third party background music provider and the business which has already paid for that licensing. It would be preferable if you found and ruled that public area televisions are merely an extension of a guest's guestroom experience and of de minimis value and therefore no license is required.

DISPUTE RESOLUTION PROCESS

The reality of a small business retaining counsel to advance a \$400 to \$1,000 rate dispute in arbitration is on its face absurd. No small business independently can afford to assert such claim and ever rationally justify the expense. Thus, thousands of small businesses annually just succumb to the licensing extortion by ASCAP, BMI and SESAC, or face draconian consequences for violating the copyright laws of this country. This is reminiscent of the early days of licensing, when the local collectors of licensing fees came knocking at your door like mafia thugs, threatening and intimidating small businesses into paying or fear physical confrontation and personal injury. Those days are long past, but current enforcement process not all that different. Now the mafia thugs are replaced with collection agencies. The process presently for fee disputes is not readily available and affordable to small business and is stacked completely in favor of the licensor. The Justice Department must modify the licensor contract such that a simple and affordable dispute process is clearly provided in the licensing agreement and available to a small business.

To my knowledge, there is no benefit derived by the publisher or artists who created the copyrighted piece in the first instance. No publisher or artist ever receives a licensing revenue statement that says he or she is receiving payment from Mom and Pop's Bar for a portion of their licensing fee payment. The fees collected from small business simply fund ASCAP and BMI and their organized collectors, with no apparent benefit to the copyrighted publisher or artist. To us in small business, it has the appearance of merely a license to steal from small business, and this practice should be stopped or at a minimum dramatically revised and restricted.

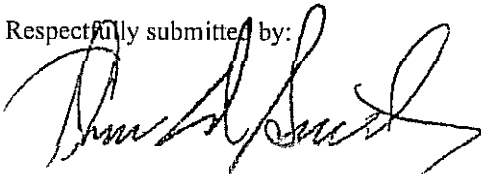
MARKET RATE PRICING

To the small business person, a national rate which disregards market variations appears to lack common sense and any justifiable rationale. There are Primary, Secondary, Tertiary and Rural markets. The revenue, margins, and profitability dramatically vary by market and the cost of licensing should, at least in part, reflect a market relative pricing. For example, a 100 room mom and pop hotel in Iron Mountain, Michigan charging \$49 a night, should not, in my opinion pay the same licensing fee that a 100 room hotel in Washington DC charging \$499 a night. The mom and pop probably can not afford MUZAK and if it has a TV in its lobby, the relational cost of licensing compared to the DC hotel ignores common sense given the disparate effective cost in relation to the market.

LIMITED AND FOCUSED SERVICE HOTELS GENERALLY

In summary, to us it appears that the historical ASCAP and BMI licensing of our background music in our lobbies and public areas should be precluded and ended by the advent of third-party music providers already paying the licensing fees. We have never understood the need to license our public area televisions and are currently in this double-dipping dispute with ASCAP and BMI now. We would argue that in limited service and focused service hotels, where we provide the media as a guest amenity and an extension of their guestroom and convenience, rather than deriving any profit center as a result of merely having it available in the lobby and lounge. We should not be bullied and intimidated into paying for the incidental song that is played during a newscast or sporting event broadcast. To us, it is draconian to extract \$400 - \$1,000 per hotel just for licensing the use of those televisions we are required to provide by our hotel franchisor. To us, it is simple unconscionable.

Respectfully submitted by:



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